Filed 4/13/15 In re I.M. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re I.M., a Person Coming Under the Juvenile Court Law.	
MENDOCINO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. M.B., Defendant and Appellant.	A140136, A142275 (Mendocino County Super. Ct. No. SCUKJVSQ1316804)

I. INTRODUCTION

In the first of these two appeals,[1] M.B. (Mother), the mother of newborn I.M. (Minor), challenges a disposition order removing Minor from her care following a positive drug test on the baby at birth. In the second appeal, Mother challenges a six-month review order continuing Minor's placement with Kelly, a longtime friend of Mother's, rather than returning her to Mother. Finding no merit to either appeal, we shall affirm.

[1]The appeals were ordered consolidated for disposition.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Petition and Detention

In July 2013, Mother gave birth to Minor. A few days later, a social worker from the Mendocino County Health and Human Services Agency (Agency) opened a dependency investigation because a test administered at birth showed that Minor had amphetamines in her system. Mother was not drug tested during her hospital stay. When interviewed by the social worker at the hospital, however, Mother denied using drugs. She said she had taken some ginseng pills on the day of Minor's birth and thought the positive amphetamine test was probably due to those pills.

Because the initial test result on newborn Minor was positive for amphetamine but was not specific as to whether the drug detected was methamphetamine, Mother was permitted to take the baby home. Before Minor left the hospital, a urine sample was taken from her for further, more specific drug testing. On July 22, 2013, the social worker learned that the urine test showed 254 ng/mL of amphetamine in Minor's system, 1,983 ng/mL of methamphetamine, 119 ng/mL of hydrocodone, and 68 ng/mL of oxycodone (both of the latter drugs being opiates).[2]

Upon learning of these results, the social worker was particularly alarmed because the methamphetamine detected in Minor exceeded the threshold amount for a positive test by a factor of ten. He and his supervisor went immediately to Mother's home and alerted the sheriff's department to send a deputy to assist. At that time Mother was staying with her husband, S.T. When interviewed during this home visit, Mother continued to deny drug use—specifically denying use of methamphetamine—and refused to take responsibility for having endangered Minor. She said she was taking Klonopin by prescription and was told by a social worker supervisor at the hospital that this could show up on a drug test as amphetamines.

[2]The social worker learned from the hospital that the opiates could have been used during the baby's delivery.

At first Mother repeated her story about the ginseng pills. After further questioning, Mother admitted she had taken some "cross tops" (also known as "trucker's speed") on the day of Minor's birth. The social worker did not believe this was the full extent of Mother's drug use because methamphetamine does not come in pill form. Due to the extremely high concentration of methamphetamine in Minor's drug test and Mother's changing stories, the social worker placed Minor into protective custody. He was concerned in part because Mother was breastfeeding Minor, and he feared Minor could be exposed to drugs through breast milk. He was also concerned that Minor might suffer withdrawal symptoms due to drug exposure or might even die from the high dosages that appeared to be involved.

On July 24, 2013, the Agency filed a dependency petition alleging that Minor came within the provisions of Welfare and Institutions Code[3] section 300, subdivision (b)(1) on the grounds that Mother was unable to provide regular care for Minor due to "mental illness, developmental disability, or substance abuse." At the detention hearing, Mother's attorney proposed that under section 319, subdivision (d)(1), Minor be allowed to remain with Mother in the home of the maternal grandmother, D.B. (Grandmother), with drug testing and random visits by the social worker and Minor's counsel as protective measures. The juvenile court found there was a prima facie showing that Minor came within section 300 and ordered Minor detained, finding "this level of methamphetamine is really deleterious and dangerous to a child with a developing brain." (§ 319, subd. (b).)

The court ordered Grandmother's home assessed for possible relative placement. Mother was ordered to submit to random drug tests twice a week and not to breastfeed until she had a period of clean drug tests. The social worker promptly assessed Grandmother's home and found it did not meet the Agency's standards, in part because Grandmother reported that Mother and L.M., Minor's biological father, had a violent

[3]Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

relationship, especially when L.M. drank.[4] Mother agreed with that assessment but told the social worker she had ended her relationship with L.M. in May 2013. Pending completion of the assessment of Grandmother's home, Minor was placed in temporary foster care.

B. Jurisdiction

By mid-August 2013, Mother had completed five drug tests, with four showing evidence of benzodiazepines and one showing the presence of opiates, but none showing methamphetamine or amphetamine. Mother told the social worker the benzodiazepines in her system were from the prescribed drug, Klonopin, and the opiates were from a Norco prescription she was given for pain after surgery shortly after giving birth to Minor, or from a second Norco prescription following a bad fall in July or August 2013.

At the jurisdictional hearing on August 15, 2013, the court found not credible Mother's denials of drug abuse and rejected her story about using ginseng tablets. The evidence submitted to the court for the jurisdiction hearing confirmed a history of drug use by Mother going back many years, and continuing during her pregnancy with Minor. Her medical records showed that the indicated health risks in Mother's pregnancy included a history of "opioid dependence and benzo[diazepine] use." According to these records, Mother used opiates and benzodiazepines illicitly on a daily basis beginning at age 27—she was 38 years old at the time of Minor's birth—and, further, during her pregnancy with Minor, she tested positive test for opiates on two occasions and for cannabis once.

At the conclusion of the jurisdiction hearing, the court found that Mother "has a substance abuse problem that inhibits her from providing regular and adequate care for her new born child. [¶] The child . . . tested positive for methamphetamine,

[4]On September 9, 2013, the Agency filed a subsequent petition under section 342, alleging that Minor came within the purview of section 300, subdivision (b), because L.M. had a significant criminal background, including willful cruelty to a child, assault, disorderly conduct and public intoxication. He had a recent history of substance abuse and also a history of domestic violence against Mother, including an arrest in 2012.

amphetamine, and opiates." The court found, further, that Mother "continued to breast feed her infant after birth despite her methamphetamine use the day of birth. The child's methamphetamine level was 1983 ng/mL and the positive cutoff is 200 ng/mL." Based on the evidence presented, the court determined that Minor was a dependent child subject to the court's jurisdiction. (§ 300.) The court approved temporary placement of Minor in Grandmother's home prior to disposition, with permission for Mother to live there as well.

C. Placement in Grandmother's Home Prior to Disposition

Not long after the jurisdiction hearing, more problems arose. On August 19, 2013, Mother was arrested for attempting to fill a prescription in S.T.'s name for Norco while S.T. waited in the car. The pharmacy called the prescribing doctor's office, discovered the prescription was fraudulent, and called the police. Mother left the pharmacy abruptly before the police arrived, but she was apprehended and identified by the pharmacy employee.

In addition to the fraudulent prescription, the police found in Mother's purse in the car an empty pill bottle with a prescription label in Mother's name indicating it had contained 120 Norco tablets, dated August 14, 2013. Mother admitted filling the prescription and testified she knew it was not a valid prescription, but she gave the pills to S.T. Police found a second empty prescription bottle in Mother's name for six Norco pills in the glove box, dated August 10, 2013.[5]

Following her arrest, Mother continued to deny using drugs except Klonopin or Norco, and she contended her doctor did not object to her breastfeeding while she was taking these prescribed drugs. Mother told the social worker she had tried marijuana and methamphetamine in her teens and had a problem with opiate addiction in her twenties and early thirties—which was consistent with her medical records—but that she no

[5]The police interviewed S.T. about the incident, and he claimed to have no knowledge that the fraudulent prescription had been written in his name. When asked if Mother had a problem with Norco addiction, S.T. answered, "Maybe she doesn't, maybe she does."

longer used illegal drugs. She also reported, however, that she had used Norco four days earlier, while continuing to breastfeed Minor. She told the police officer who interviewed her that she and S.T. both planned to use the fraudulently obtained pills and that she took Norco twice a week.

On August 27, 2013, the Agency removed Minor from Grandmother's care and placed her on an emergency basis in the home of Kelly M., a mental health nurse and longtime friend of Mother's, who qualified as a nonrelated extended family member. (§§ 361.2, subd. (e)(3), 361.45, 362.7.) Kelly had three children of her own and had previously cared for children for the Agency.

D. Disposition

The disposition hearing took place on October 8 and 16, 2013. By that time Mother had been approved for participation in the county's Family Dependency Drug Court (FDDC), which would give her access to treatment options and other services. She had also recently started participating in an Alcohol and Other Drug Program (AODP) and had been accepted for an Intake Support Group. At the hearing, however, she submitted a statement not under oath—what amounted to a pro se trial brief—in which she continued to deny illicit drug use and explained that a couple of "caffeine based" pills, equivalent to "a couple cups of coffee," given to her by a "nurse friend," accounted for the positive drug test on Minor shortly after birth.

Kelly testified that she found Minor crankier and harder to calm than most newborn babies and noticed some rigidity in Minor or jerkiness in her movements, pointing out that she had seen similar symptoms in adults who use Klonopin. These symptoms had lasted for "a couple weeks" after Kelly took Minor into her home. Overall, though, Kelly reported that Minor was healthy and continued to develop normally during the dependency proceedings.

Kelly testified that she had seen Mother alone with Minor during Minor's placement with Grandmother, as Mother and child were alone together when she came to pick the infant up. Kelly also authenticated copies of text messages she had received from Mother the day before Kelly's appearance to testify. The text messages revealed

strong negative feelings on Mother's part toward Grandmother, including that she "strongly disliked" Grandmother, called her "toxic," and said she "reeks of hostility if she doesnt [*sic*] agree with whats [*sic*] going on." Mother also called Grandmother a "bitch." The text messages also included a proposal by Mother that she and Kelly go out for drinks: "We havent [*sic*] closed down a bar in a while and we r [*sic*] about due." The text message exhibit was admitted into evidence.

Citing Mother's admission to FDDC, her participation in AODC, testimony from Grandmother and Kelly that Mother's visits with Minor had gone well, and other evidence concerning Mother's successful parenting,[6] Mother's counsel requested that Minor be returned to Grandmother's home, with conditions. Minor's counsel opposed that requested disposition, citing Mother's involvement with drugs on a "significant . . . and an unhealthy level." Minor's counsel also expressed concern that Mother was continuing to breastfeed Minor, despite being told not to, even if the only drugs she was using were Klonopin and Norco. She thought Grandmother was too "embroiled in [Mother's] stories" and "just isn't able to keep [Minor] safe at this point."

At the conclusion of the hearing, the court found by clear and convincing evidence that there was a substantial danger to Minor's "physical health, safety, protection or physical or emotional well-being" and there were no other means to protect her short of removal from Mother's home. (§ 361, subd. (c).) The court found Mother had made "minimal" progress toward changing the things in her life that had necessitated Minor's removal (see § 366, subd. (a)(1)(E)), and continued Minor's placement in Kelly's home, with reunification services and twice-weekly supervised visits for Mother. (§§ 361.2, subd. (e)(3), 361.5 subd. (a) & (a)(1)(B).)

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[6]There was evidence that Mother had three older teenage children with S.T., who lived with their father. The three older boys appeared to be doing extremely well in school, had excellent attendance, played organized sports, and the oldest son was in college and had been offered a scholarship. Mother had participated fully in the upbringing of the older boys and was actively involved in the youngest son's school, serving on several committees and chairing one.

In the first of the consolidated appeals before us, Mother seeks review of this disposition order (No. A140136). She argues the evidence was insufficient to justify removal, and alternatively, the juvenile court failed to consider alternate means of protecting Minor short of removal. At the very least, she argues, the court should have placed Minor with Grandmother, instead of Kelly, based on the state's preference for relative placement. (§ 361.3.)[7]

E. The Six-Month Review

Mother's case plan, as updated following the disposition hearing, included the conditions that she visit regularly with Minor, stay free from illegal drugs and "show [her] ability to live free from drug dependency," comply with required drug testing, obtain resources to meet Minor's needs and provide a safe home for her, sign appropriate medical releases, "consistently, appropriately, and adequately parent" Minor, update her social worker with changes of address and telephone number, and contact her social worker on a weekly basis.

Beginning in September 2013, Mother participated in AODP four times a week, attended Narcotics Anonymous meetings five times a week, and went to counseling. Shortly thereafter she was accepted into FDDC. Although she initially continued to deny she had a drug problem, she went to drug treatment to demonstrate her willingness to follow the Agency's guidance in regaining custody of Minor. She complied with random

[7]Mother also raised an issue under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.; § 224.2) in No. A140136, but that issue is no longer part of these appellate proceedings. During the dependency investigation, Mother told the social worker that either she or L.M. might have Cherokee ancestry. Notices were sent to three Cherokee tribes pursuant to the ICWA (§ 224.2). Mother claimed in her opening brief in No. A140136 that the ICWA notice to one of the tribes was sent to the wrong address. We granted the Agency's motion to dismiss Mother's ICWA claim as moot. Wrong address or not, the juvenile court made a finding that ICWA does not apply after all three tribes responded that Minor is not an Indian child and is not eligible for tribal membership.

drug testing, with no positive tests for methamphetamine, although there was one positive test for THC,[8] another for benzodiazepines and oxycodone,[9] and one diluted test.

Mother was not entirely cooperative as she transitioned into a treatment regime. She was repeatedly sanctioned at AODP and FDDC for rule violations, such as showing up late for testing or testing positive without a prescription on file. And after her eighteenth sanction, she was ordered by FDDC to participate in the Ford Street Substance Abuse Treatment Program (Ford Street), a 60-day residential program. At this point, Mother for the first time began to show a readiness to acknowledge her drug problem and the importance of addressing it. She entered Ford Street in December 2013 and graduated in February 2014. Her awareness of her "triggers" for drug use and warning signs of addictive behavior improved steadily. Upon graduation from Ford Street, she re-enrolled in AODP. She completed the Intake Support Group on April 9, 2014, and her counselor in that program reported that Mother had now taken "full responsibility" for her addiction and was "solid" in her recovery.

After leaving Ford Street, Mother moved onto her mother's property, renting a studio there for $400 per month. Mother was registered in community college full-time, taking most of her classes online, and receiving financial aid. Although the record suggests she was not gainfully employed and had applied for welfare, Mother visited regularly with Minor and the visits were generally positive for both. Despite signs of progress, however, there were some continuing indications of concern. The social worker expressed concern, for example, that Mother continued to breastfeed in clear defiance of repeated directives to stop doing so.

At the six-month review on April 15, 2014, Mother filed a declaration disputing certain aspects of the social worker's six-month status review report, but made no request

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[8]Mother disputes the accuracy of the positive test for THC, just as she had claimed the test on I.M.'s urine may have shown a "false positive" for methamphetamine.

[9]It appears that a test showing benzodiazepines or opiates was considered a positive drug test, despite Mother's claims that these results were from prescribed medications.

that Minor's placement with Kelly be changed. Mother sought only increased visitation, accompanied by sufficient monitoring. The Agency recommended that Minor remain in her then current placement because Mother had not yet achieved a reasonable length of recovery, had not engaged in parenting classes, and had not obtained safe and stable housing. Nevertheless, the Agency expressed the hope that Minor could be returned to Mother at the twelve-month review due to Mother's "significant" progress in alleviating the problems that had led to Minor's removal, her regular and consistent visitation with Minor, her successful completion of several of her case plan objectives, and her demonstrated capacity to provide for Minor's safety, protection and physical and emotional health.

The juvenile court ordered that Minor remain in Kelly's home. It found by clear and convincing evidence that there was a "a substantial risk of detriment to the safety, protection, or physical or emotional well-being" of Minor if she were returned to Mother, finding that Mother had "partially" fulfilled her case plan and had made "adequate" progress in alleviating the conditions that led to Minor's removal. (§ 366.21, subds. (e), (g)(1)(B).) The court increased Mother's visitation to two-hour visits twice a week and authorized the Agency to allow the visits to be unsupervised in its discretion. And it continued reunification services, ordered sibling visitation, and found there was a substantial probability that Minor could be returned to Mother at the twelve-month review.

Again Mother appealed (No. A142275), arguing here that Minor should have been returned to her care at the six-month review.

F. Subsequent Developments

At the Agency's request, we have taken judicial notice that Minor was returned to Mother at the twelve-month review on August 13, 2014. The appeals therefore are arguably moot. Nevertheless, we exercised our discretion to review the challenged orders because they could result in adverse future consequences for Mother, including reduced eligibility for reunification services if Minor were later to be removed from Mother's care again.

III. DISCUSSION

A. There was substantial evidence to support removal of Minor from Mother's care.

Section 361, subdivision (c) governs removal of a child from a parent. As applicable here, that section requires proof by clear and convincing evidence that there "would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) We review the juvenile court's order for substantial evidence as to both prongs of this test (*In re T.V.* (2013) 217 Cal.App.4th 126, 135–136; *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 285, 288–289, 293), bearing in mind the requirement of clear and convincing evidence (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809), and considering the facts as they stood at the time of the disposition hearing (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 701). "Substantial evidence" is that which is reasonable, credible and of solid value, such that a reasonable trier of fact could make the same finding. We have no power to assess the effect or value of evidence, to reweigh it, to consider the credibility of a witness, or to resolve conflicts in the evidence. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194, disapproved on other grounds in *In re I.J.* (2013) 56 Cal.4th 766, 780–781.)

1. Substantial Danger to Minor

Much of Mother's argument on appeal rests on the theory that she did not have a drug problem. She contends the only evidence that Minor was at risk was a single drug test immediately after birth, and there was no evidence of continuing danger. Specifically she claims the social worker's concern about breastfeeding was insufficient to support a finding of actual risk to Minor because the only drugs revealed in her tests were Klonopin and Norco. The social worker's concern about breastfeeding while using those prescriptions, she claims, was not supported by expert opinion and was based only on the social worker's Internet research.

We are satisfied there is substantial evidence in the record for the juvenile court's finding under section 361, subdivision (c)(1). The extremely high concentration of methamphetamine in Minor's system, which could have resulted in ongoing health problems, coupled with Mother's plainly false denials of methamphetamine use, presented a continuing risk to Minor's future health and safety. Mother apparently did have legal prescriptions for Klonopin and, at times, Norco. Her medical records confirm that she may have had legitimate need for some type of medication for anxiety, depression and a mood disorder. Of course, that does not account for the presence of an extremely high concentration of methamphetamine in Minor's urine at birth,[10] nor does it rule out the possibility that Mother was abusing prescription drugs.

Mother's admitted history of opiate addiction and the medical records from her pregnancy confirming her use of opiates while she was carrying Minor justified a strong suspicion that she had an unhealthy relationship with prescription drugs, and highly-addictive opiates in particular. Even setting aside the breastfeeding issue (as to which Mother disputes a health risk exists), the fact is Minor's level of methamphetamine exposure was nearly ten times the minimum threshold for a positive drug test. The social workers were concerned that the baby could have undergone withdrawal or even died from such a large dose, and the court worried about possible adverse effects on Minor's developing brain.

The unusually high methamphetamine test result alone would have justified keeping Minor in protective custody and under close watch for possible health consequences. That test result left no doubt that Mother had consumed methamphetamine prior to Minor's birth and exposed her cover story as false. Mother's continuing denials justifiably raised concern that she might continue using

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[10]The drug test explained that methamphetamine can be of two isomers, and the test did not distinguish between them. One of those isomers can be the by-product of certain kinds of prescription drugs (none of which is Klonopin or Norco). However, Mother has never claimed she was taking a prescription drug that causes "false positive" drug test results for methamphetamine.

methamphetamine, in disregard of Minor's welfare. Even Mother's admitted behavior—taking "cross tops" on the day Minor was born—reflected a fundamental disregard for the baby's health. And the circumstances surrounding her later arrest for trying to fill a fraudulently obtained Norco prescription provided yet more evidence of an unacknowledged and untreated drug problem.

Mother complains there was no competent evidence that her prescribed medications were harmful to a nursing baby, but she fails to come to terms with the full extent of the evidence of her drug use. In effect, she asks that we accept on appeal the factual premise that she used only prescription drugs. The juvenile court found otherwise, and its finding on this point is amply supported by the evidence. Methamphetamine is a highly addictive drug, and in light of Mother's documented history of opiate addiction and continuing state of denial, her suggestion that we view the discovery of methamphetamine in Minor's system at birth as a single isolated incident is untenable. The evidence that Mother was likely more than an occasional user of methamphetamine may be circumstantial, but that does not detract from the weight the juvenile court was entitled to give it.[11]

2. Other Reasonable Means to Protect Minor

Next Mother argues there was no substantial evidence that the Agency considered reasonable alternatives to removal, including returning Minor to her care in Grandmother's home, under Grandmother's supervision, with provision of family maintenance services and oversight and monitoring by the Agency. She points out the juvenile court was required to find by clear and convincing evidence that there were no

[11]Mother does not deny that breastfeeding by a methamphetamine user puts an infant at serious risk. The American Congress of Obstetrics and Gynecology (ACOG), for instance, warns that mothers who actively use methamphetamine should not breastfeed. (*Methamphetamine Abuse in Women of Reproductive Age* (March 2011) American College of Obstetricians and Gynecologists <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Methamphetamine-Abuse-in-Women-of-Reproductive-Age> [as of April 10, 2015].)

other reasonable means by which Minor's physical health could be protected without removal from Mother's home. (§ 361, subd. (c)(1).) She further notes the Agency was required to identify the reasonable efforts made or considered to eliminate the need for removal (Cal. Rules of Court, rule 5.690(a)(1)(B)(i)), and the court was required to make a specific finding that "reasonable efforts were made to prevent or to eliminate the need for removal" and must "state the facts on which the decision to remove the minor is based." (§ 361, subd. (d); *In re Ashly F.*, *supra*, 225 Cal.App.4th at pp. 809–810.) She contends the Agency's disposition report and the court's order failed to meet these standards.

We conclude there is substantial evidence in the record showing the juvenile court's consideration of reasonable alternatives to removal. Mother's argument ignores the fact that the Agency actually tried to place Minor in Grandmother's care from August 14 to August 27, 2013. Even the limited contact between Mother and Minor during this temporary period proved unsatisfactory. Several people reported that Mother was seen alone with Minor during the August 2013 placement with Grandmother, in violation of the conditions of the placement. Grandmother and Mother disputed these reports, with Grandmother claiming that she left Minor with her daughter-in-law, who lived on the property, when she could not maintain constant supervision of Minor. But the reports of unsupervised mother-daughter contact still provided substantial evidence for the disposition. The social worker believed Grandmother was too "enmeshed" with Mother to provide adequate supervision because Grandmother "enabl[ed]" and made excuses for Mother, and the juvenile court agreed. Grandmother allowed Mother to breastfeed Minor while Minor was in her care. And Mother had not yet taken responsibility for the methamphetamine in Minor's drug test, which left Mother in denial and Minor in danger.

Nor do we find the Agency's report or the juvenile court's order deficient for failure to adequately address the reasonable alternatives prong. Though not discussed under the heading devoted to reasonable alternatives, the social worker's report did discuss the placement of Minor with Grandmother and the reasons why it was unsuccessful. The court also stated facts to substantiate its reason for removing Minor

from Mother's home, including (1) the extreme exposure to methamphetamine and opiates at birth; (2) Mother's changing stories and the "denial issue from the start which causes concern"; (3) the fraudulent Norco prescription; (4) the text messages sent by Mother, including her desire to "close[] down a bar" with Kelly; and (5) Grandmother's "acceptance of the mother's denial"—with the juvenile court indicating disbelief of Mother's story about the prescriptions—making it "hard to protect the child in that situation."

Mother cites a number of cases to support her position, but we find them distinguishable and of little persuasive value. In none did the removal order follow an extremely high dose of illegal drugs in an infant, a breastfeeding mother, or a trial placement with a relative that proved unworkable. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 22–23 [nonoffending parent had severed relationship with offending parent, who had been sentenced to prison]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172 [improper to include drug abuse component in case plan because there was "no evidence" of drug abuse by mother]; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529 [where only reason for placing child out-of-home was to complete a bonding study, and there was no reason the study could not be completed while the child was placed with the mother, removal order was not supported]; *In re Ashly F.*, *supra*, 225 Cal.App.4th at pp. 805, 808–810 [children improperly removed from abusive mother where the social worker's "report did not mention any reasonable alternatives to removal from the home that had been tried and failed or that had been considered and rejected"].) The cases cited by Mother do not require reversal of the removal order.

B. Mother's challenge to the placement of Minor with Kelly instead of Grandmother is moot, and in any case, the order was not an abuse of discretion.

Mother claims the juvenile court erred at disposition in failing to place Minor back into Grandmother's care, with Mother living in the same household. There is a legislative preference for relative placement (§ 361.3), which she claims was not properly taken into account. She relies especially on *In re Esperanza C.* (2008) 165 Cal.App.4th 1042 and *In re R.T.* (2015) 232 Cal.App.4th 1284.

This aspect of Mother's appeal appears to be moot now that Minor is back in Mother's care. No relief granted at this point would remedy any error in placement that occurred between August 27, 2013 and August 13, 2014. But assuming this claim of error were not moot, we find no merit in it. We review an order denying relative placement under section 361.3 for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *In re N.V.* (2010) 189 Cal.App.4th 25, 30–31; *In re Luke L.* (1996) 44 Cal.App.4th 670, 680; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1060.) As discussed, the Agency actually tried placing Minor with Grandmother, and the arrangement proved unsatisfactory because Mother was allowed unsupervised time with Minor, despite evidence that she was still abusing prescription drugs and still breastfeeding. Thus, there was good reason to fear that Grandmother could not or would not protect Minor from Mother's drug abuse. That Mother remained dependent on Grandmother's assistance despite their difficult and complicated relationship raised further concerns about placement with Grandmother. The juvenile court's decision to place Minor with Kelly rather than Grandmother at the disposition hearing was not an abuse of discretion.

C. Mother waived any claim that the court erred in not returning Minor to her at the six-month review, and in any case, the court's order was supported by substantial evidence.

Finally, Mother argues that the juvenile court should have returned Minor to her at the six-month review because there was insufficient evidence of " 'substantial risk of detriment' " to Minor to support the juvenile court's order continuing Minor in Kelly's care. (§ 366.21, subd. (e).) In evaluating such a claim of error, we apply a substantial evidence standard of review. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1483; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763–764.)

Mother forfeited this issue by not raising it in the juvenile court. She did not ask the court to return Minor to her. Her attorney told the court the only issue at the six-month review hearing was visitation: "Regarding the mother's visits, your Honor, that's the only issue that we would like addressed." Counsel requested that Mother's visits be increased from an hour twice a week to three hours twice a week, unsupervised. The court ended up granting a minimum of two-hour visits twice a week, with the Agency being given discretion to gradually make the transition to unsupervised visits.

Even if we were to address the merits of Mother's claim, we would affirm the six-month review order. For reasons we need not repeat, we find substantial evidence that Mother's initial denial of her drug problem contributed greatly to the need to remove Minor from Mother, to place her in Kelly's care, and to leave her there until Mother established sufficient sobriety and self-awareness to care for the child responsibly. At the six-month review Mother had only recently graduated from Ford Street, had not obtained gainful employment, did not yet have a stable, independent living situation, and was still early in her recovery. She also had not completed the infant parenting class that was required as part of her case plan. Meanwhile, Minor was thriving in Kelly's home, and the visitation was going smoothly, to the apparent satisfaction of all.

IV. DISPOSITION

The progress Mother has demonstrated since the fall of 2013 is commendable, and hopefully it continues, but given the state of the evidence at the time of the disposition hearing and the six-month review, the juvenile court was justified in placing Minor with Kelly and withholding the baby's return to Mother until Mother's recovery was more rooted and her life more settled. The orders are affirmed.

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Streeter, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.

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